

Form PTO-1594 (Rev. 01-09)
OMB Collection 0651-0027 (exp. 02/28/2009)

U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies):

Empresa Cubana Del Tabaco

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation- State: CUBA
☐ Other _____

Citizenship (see guidelines) _____

Additional names of conveying parties attached? ☐ Yes ☒ No

3. Nature of conveyance /Execution Date(s) :

Execution Date(s) February 9, 2010

- ☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☒ Other SEE ATTACHED SHEET

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? ☐ Yes ☒ No

Name: Empresa Cubana Del Tabaco

Internal

Address: _____

Street Address: Calle O'Reilly No. 104

City: La Habana

State: _____

Country: CUBA Zip: _____

- ☐ Association Citizenship _____
☐ General Partnership Citizenship _____
☐ Limited Partnership Citizenship _____
☒ Corporation Citizenship CUBA
☐ Other _____ Citizenship _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☒ No
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and Identification or description of the Trademark.

A. Trademark Application No.(s)

75/226002, 77/157,193

B. Trademark Registration No.(s)

2128050, 2145804, 2212119

Additional sheet(s) attached? ☐ Yes ☒ No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

COHIBA; HABANOS; LA PERLA; Miscellaneous Design; LA CASA DEL HABANO

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: Jenifer deWolf Paine

Internal Address: Trademark File Room

Street Address: 1585 Broadway

City: New York

State: NY Zip: 10036-8299

Phone Number: (212) 969-3000

Fax Number: (212) 969-2900

Email Address: trademark@proskauer.com

6. Total number of applications and registrations involved:

5

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 140.00

- ☒ Authorized to be charged to deposit account
☐ Enclosed

8. Payment Information:

Deposit Account Number 162500

Authorized User Name Jenifer deWolf Paine

9. Signature:

Jenifer deWolf Paine
Signature

February 19, 2010

Date

Jenifer deWolf Paine

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 5

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK

700430617

REEL: 004162 FRAME: 0574

Nature of Conveyance

This submission is to correct an error made in a previously recorded document at Reel/Frame No. 4110/0028 that erroneously affects the identified application(s) or registration(s).

TO: JENIFER DEWOLF PAINE COMPANY: TRADEMARK FILE ROOM

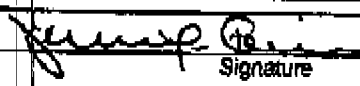
FEB 19 2010 10:41 FR PROSKAUER ROSE LLP 182 969 2928 TO *6132*21684001*7 P.02

02/19/2010
700429778

Form PTO-1594 (Rev. 01-09)

OMB Collection 0551-0627 (exp. 02/28/2009)

U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

RECORDATION FORM COVER SHEET TRADEMARKS ONLY	
To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.	
1. Name of conveying party(ies): Empresa Cubana Del Tabaco <input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation- State: CUBA <input type="checkbox"/> Other _____ Citizenship (see guidelines) _____ Additional names of conveying parties attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	2. Name and address of receiving party(ies) <input type="checkbox"/> Yes Additional names, addresses, or citizenship attached? <input checked="" type="checkbox"/> No Name: Empresa Cubana Del Tabaco Internal Address: _____ Street Address: Calle O'Reilly No. 104 City: La Habana State: _____ Country: CUBA Zip: _____ <input type="checkbox"/> Association Citizenship _____ <input type="checkbox"/> General Partnership Citizenship _____ <input type="checkbox"/> Limited Partnership Citizenship _____ <input checked="" type="checkbox"/> Corporation Citizenship: CUBA <input type="checkbox"/> Other _____ Citizenship _____ If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Designations must be a separate document from assignment)
3. Nature of conveyance / Execution Date(s): Execution Date(s) _____ <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input checked="" type="checkbox"/> Other SEE ATTACHED SHEET	
4. Application number(s) or registration number(s) and identification or description of the Trademark. A. Trademark Application No.(s) B. Trademark Registration No.(s) 73/226602, 77/157,193 2128030, 2145804, 2212119 Additional sheet(s) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown): COHIBA; HABANOS; LA PERLA; Miscellaneous Design; LA CASA DEL HABANO	
5. Name & address of party to whom correspondence concerning document should be mailed: Name: Jenifer deWolf Paine Internal Address: Trademark File Room Street Address: 1585 Broadway City: New York State: NY Zip: 10036-8299 Phone Number: (212) 859-3000 Fax Number: (212) 859-2900 Email Address: trademark@proskauer.com	6. Total number of applications and registrations involved: 5 7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$140.00 <input checked="" type="checkbox"/> Authorized to be charged to deposit account <input type="checkbox"/> Enclosed 8. Payment Information: Deposit Account Number 162500 Authorized User Name Jenifer deWolf Paine
9. Signature:  February 19, 2010 _____ Signature Date Jenifer deWolf Paine Name of Person Signing Total number of pages including cover sheet, attachments, and document: 5	

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1480, Alexandria, VA 22313-1480

TRADEMARK
REEL: 004162 FRAME: 0576

Declaration of Adargelio Garrido Under TMEP § 503.06(c)

1. I am the General Counsel for the Intellectual Property matters and I hold a power of attorney from Empresa Cubana Del Tabaco ("CUBATABACO"), which has a place of business at Calle O'Reilly No. 104, Ciudad La Havana, Cuba. I have authority to speak for that entity on the topics covered in this Declaration. All statements made herein of my own knowledge are true. Statements made in this declaration concerning legal proceedings in the United States are upon information provided by United States counsel and are believed to be true.
2. CUBATABACO is the owner of U.S. Trademark Reg. No. 2,128,050 for the mark LA PERLA, U.S. Trademark Reg. No. 2,145,804 for the mark (miscellaneous design), U.S. Trademark Reg. No. 2,212,119 for the mark LA CASA DEL HABANO, U.S. SN 75/226,002 for the mark COHIBA, and U.S. Trademark SN 77/157,193 for the mark HABANOS (collectively, the "CUBATABACO Marks"). CUBATABACO filed the applications for the CUBATABACO Marks on October 27, 1995, August 16, 1996, August 16, 1996, January 15, 1997, and April 16, 2000, respectively, and at no time thereafter has CUBATABACO assigned its rights to the CUBATABACO Marks to any party.
3. On December 8, 2009, an "Assignment Cover Sheet" with an accompanying document was filed, purporting to transfer the CUBATABACO Marks to Mr. Nilo Jerez of Coral Gables, Florida ("Jerez"). This recorded document was submitted with erroneous information, as detailed below.
4. The accompanying document was an *ex parte* Writ of Attachment on Judgment ("Writ") that Jerez obtained from the Clerk of the United States District Court for the District of Columbia without Court order, in violation of United States law.
5. Jerez then purported to execute the Writ of Attachment against the CUBATABACO Marks by recording the Writ under Reel/Frame Number 4110/0028.
6. By recording the Writ, Jerez sought to seek satisfaction of a default judgment issued by a Florida state court (the Eleventh Judicial Circuit In and For Miami-Dade County, Florida) against the Republic of Cuba on January 30, 2007, Case No. 05-18719 CA9 ("State Default Judgment"). On May 6, 2009, the United States District Court for the Southern District of Florida, in Case No. 08-23405, issued a judgment upon default giving "full faith and credit" to the State Default Judgment ("Federal Florida Default Judgment"). Jerez registered the "full faith and credit" default judgment in the United States District Court for the District of Columbia on September 1, 2009 pursuant to 28 U.S.C. § 1963 ("Registered Judgment"), with docket number 09-00466. On October 2, 2009, Jerez obtained from the Clerk of this Court the Writ in satisfaction of the Registered Judgment.
7. CUBATABACO was not named in the State Default Judgment, the Federal Florida Default Judgment, or the Registered Judgment (hereafter sometimes collectively "Judgments"). CUBATABACO was not a party to the lawsuits and proceedings resulting in said Judgments, did not participate with any those lawsuits or proceedings, and was not given any notice of those lawsuits and proceedings.
8. No court has ever authorized execution upon CUBATABACO's property, including the CUBATABACO Marks, to satisfy the Judgments. No court has ever determined or held CUBATABACO liable for the Judgments.
9. On November 19, 2009, CUBATABACO filed a motion in the United States District Court for the District of Columbia, Case No. 09-mc-00466, to vacate the Writ as invalid and contrary to

law. On December 21, 2009, Jerez filed papers in opposition to that motion to vacate. CUBATABACO's reply paper were filed on January 26, 2010. The Court has not yet decided CUBATABACO's motion to vacate the Writ.

10. Jerez' purported execution by recording the Writ under an Assignment Cover Sheet, purporting to show an assignment of the CUBATABACO Marks to Jerez, was improper, unlawful, and of no effect for multiple reasons, including without limitation:

(a) CUBATABACO was not named in the State Default Judgment, the Federal Florida Default Judgment or the Registered Judgment, was not a party to the lawsuits and proceedings resulting in said Judgments, did not participate in any of those lawsuits or proceedings, and was not given any notice of those lawsuits and proceedings.

(b) The United States Department of Treasury's Cuban Assets Control Regulations ("CACR"), 31 C.F.R. §§ 515.201, 515.203, 515.310, prohibit execution upon property, including specifically trademark registrations, in which Cuba or a Cuban national has an interest, unless execution is specifically licensed by the Treasury Department's Office of Foreign Assets Control ("OFAC"). CUBATABACO is a Cuban national, and therefore this prohibition applies to its trademarks. OFAC has not issued a license authorizing the Writ, execution on the CUBATABACO Marks or any other CUBATABACO property, or execution in satisfaction of Jerez's Judgments. Under the CACR, the Writ, and any purported execution thereon, including the Assignment Cover Sheet, are therefore "null and void, and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to" the CUBATABACO Marks and CUBATABACO's other property. 31 C.F.R. § 515.203.

(c) In the Writ, Jerez asserts that CUBATABACO is an "agency or instrumentality" of the Republic of Cuba, and Jerez, by the Writ, seeks to satisfy a judgment against the Republic of Cuba. For both reasons, the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602, et. seq. applies to the Writ and the instant Assignment Cover Sheet. The FSIA expressly prohibits any attachment or execution of the property of a foreign state or an agency or instrumentality of a foreign state unless a judge of a court has ordered such attachment or execution. 28 U.S.C. § 1610 (c). No judge of a court has ordered the Writ or execution upon the property of CUBATABACO or any other property in satisfaction of the Judgments. Rather, the Writ, contrary to the FSIA, was issued by the Clerk of the Court without judicial order. The Writ and the Assignment Cover Sheet are therefore invalid and no effect.

(d) Under the Foreign Sovereign Immunities Act, the property of a foreign state and of an agency or instrumentality of a foreign state are immune from attachment and execution unless a statutory exception to immunity applies. FSIA, 28 U.S.C. § 1609. None of the statutory exceptions to this immunity applies. No court has found that any of the exceptions apply, and no court has made the findings necessary for any of the exceptions to apply.

(e) The Florida state court (the Eleventh Judicial Circuit In and For Miami-Dade County, Florida) lacked personal and subject matter jurisdiction over Jerez's action against the Republic of Cuba. The exclusive source of such jurisdiction is the Foreign Sovereign Immunities Act. The Florida state court did not even reference the FSIA in its judgment, and did not make the findings required for there to be jurisdiction under the FSIA. There was no legal basis for jurisdiction under the FSIA, including, *inter alia*, because Jerez admittedly was not a citizen of the United States at the time of the acts sued upon.

(f) As applied to the CUBATABACO Marks, the Writ and the Assignment Cover Sheet are contrary to the United States' obligations under the General Inter-American Convention for Trade Mark

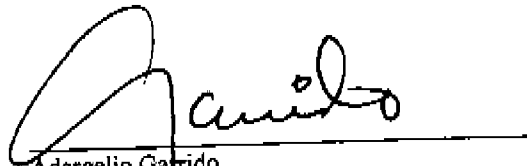
and Commercial Protection (the "IAC"), 46 Stat. 2907 (1930) and the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), 33 I.L.M. 81 (1994).

11. CUBATABACO remains the true and correct owner of the CUBATABACO Marks. The chain of title for the CUBATABACO Marks should not be considered altered by the incorrect "Assignment" recorded. CUBATABACO has been and continues to be the owner of the CUBATABACO Marks.

12. United States counsel for CUBATABACO in this matter has contacted counsel for Jerez, William John McKeague, and asked him to file corrective documents. Mr. McKeague refused.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on 9th February, 2010.



Adargelio Garrido
General Counsel for the Intellectual Property matters
and empowered attorney of
EMPRESA CUBANA DEL TABACO